



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,393	08/26/2003	Hans Henrik Jochumsen	60589.000013	2034
21967 7590 06/12/2007 HUNTON & WILLIAMS LLP INTELLECTUAL PROPERTY DEPARTMENT 1900 K STREET, N.W. SUITE 1200 WASHINGTON, DC 20006-1109			EXAMINER LUDLOW, JAN M	
			ART UNIT 1743	PAPER NUMBER
			MAIL DATE 06/12/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/647,393	Applicant(s) JOCHUMSEN ET AL.	
	Examiner Jan M. Ludlow	Art Unit 1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-12 and 15-48 is/are pending in the application.
- 4a) Of the above claim(s) 11,24-45,47 and 48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-10,12,15-23 and 46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 8/26/2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1, 4, 6, 8-10, 12, 15, 17-23, 46 are rejected under 35 U.S.C. 102(e) as being anticipated by Maynard et al (US 6,287,783).

Maynard teaches a reagent-containing (e.g., col. 7, line 46) planar test member 16, 18 abutting surface 32 of holder 12 and retained on opposite edge portions by tabs 58, shaped as claimed. The devices have upper and lower surfaces and are structurally capable of being stacked. Note that the tabs slope downward toward the abutment surface base 32, and thus have two edges ramping toward the surface as claimed. Note further that tabs 58 have a sharp edge at the bottom, at it is therefore the

Art Unit: 1743

examiner's position that they are capable of cutting into the test piece as claimed when the device is assembled as shown in Fig. 8.

3. Claims 1, 4-10, 12, 15-23 and 46 are rejected under 35 U.S.C. 102(e) as being anticipated by Sun (US 6,372,516).

4. Sun teaches test member 14, 16, 18 having reagents therein (e.g., col. 2, lines 60-67) in holder 20 having abutment surface on the bottom surface 26, 28 of the top half 22 (Figs 11, 13). Various projections are provided down the center of base 24, which are differently spaced from the abutment surface (Fig. 12) when the device is assembled. The edges of the projections engage the edges of the test member. Alternatively, projections 38a and 38b are shown as being shorter relative to the abutment surface than projections 40a-d. Some of the projections are pointed with sloping surfaces as claimed, and some have planar surfaces parallel to the abutment surface. At least two of the projections slope toward the abutment surface, e.g., the two "tooth" shaped projections closest to end 36c in Fig. 12 have sloped surfaces that come together to a pointed edge, and thus the edges of the sloped surface satisfy the claim. With regard to the "cutting edge," the projections have a sharp edge at the end, formed between the sloping edges, and it is the examiner's position that this sharp edge is capable of the claimed function. Note that the projections wouldn't serve to retain the test strip if they didn't contact the strip. Openings 30 and 32 are framed by the abutment surface. The devices have upper and lower surfaces and are structurally capable of being stacked.

5. Applicant's arguments filed February 22, 2007 have been fully considered but they are not persuasive.

6. Applicant argues that Maynard does not teach a leading edge forming a ramp sloping toward the abutment surface and forming a cutting edge, but the tabs do slope toward the abutment surface 32 (the bottom of the device as shown, e.g., in Fig. 5), and thus the edges of the sloped surface satisfy the claim. With regard to the "cutting edge," the tabs have a sharp edge at the end, formed between the sloping edges, and it is the examiner's position that this sharp edge is capable of the claimed function. Note that the tabs wouldn't serve to retain the test/absorbent stack if they didn't contact the stack.

7. Applicant argues that Sun does not teach a leading edge forming a ramp sloping toward the abutment surface and forming a cutting edge, but at least two of the projections do slope toward the abutment surface, e.g., the two "tooth" shaped projections closest to end 36c in Fig. 12 have sloped surfaces that come together to a pointed edge, and thus the edges of the sloped surface satisfy the claim. With regard to the "cutting edge," the projections have a sharp edge at the end, formed between the sloping edges, and it is the examiner's position that this sharp edge is capable of the claimed function. Note that the projections wouldn't serve to retain the test strip if they didn't contact the strip.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

Art Unit: 1743

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jan M. Ludlow whose telephone number is (571) 272-1260. The examiner can normally be reached on Monday-Thursday, 11:30 am - 8:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1743

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jan M. Ludlow
Primary Examiner
Art Unit 1743

Jml
June 7, 2007